

Subdivider: Taylor Morrison
Subdivision Name: Prynt

Private Job Account No.: 1220
Tract No. 10328
Improvement Plan No.: 2-1210
Council Approval Date: 8/2/16

CITY OF MILPITAS
SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this ____ day of _____ 2016, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "CITY"); and

Taylor Morrison, LLC, a California Limited Liability Company

(hereafter referred to as "SUBDIVIDER");

RECITALS

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a final map filed with the Milpitas City Council, marked and designated as Tract No. 10328, (the "Subdivision").
- B. The Subdivision shows certain easements which are offered for dedication for public use.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements shown on **Improvement Plan No. 2-1210** ("Improvement Plan") and specifications, which includes setting survey monuments and identified by Project Job Account No. 1220 (and any subsequent accounts created for this Subdivision, hereby referred to and made a part hereof the same as if set forth at length herein), and as set forth in the conditions of approval for the Subdivision. SUBDIVIDER agrees that any design changes to the Improvement Plan may necessitate lot line adjustments or other CITY approval.
- 2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have received approval by the City Engineer, in writing, nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of the City Engineer or his/her designee.
- 3. SUBDIVIDER shall construct said improvements and said construction is subject to the inspection of and to the satisfaction of the CITY.
- 4. SUBDIVIDER shall construct said improvements in accordance with the requirements set forth in said Improvement Plans" referred to above, all applicable local, state, and federal codes,

ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.

5. SUBDIVIDER agrees that it will carry out and shall cause its contractors to carry out construction of the said improvements in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to **Taylor Morrison, LLC** and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions.

SUBDIVIDER shall, and hereby agrees to indemnify, defend (with counsel approved by CITY), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages, the failure to comply with any state or federal labor laws, regulations or standards in connection with this AGREEMENT, including but not limited to the Prevailing Wage Laws, or any act or omission of CITY or Developer related to this AGREEMENT with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that CITY does not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless AGREEMENT because of the acceptance by CITY, or Developer's deposit with CITY of any of the insurance policies described in this AGREEMENT.

6. All said improvements shall be completed and ready for final inspection by the CITY **within 36 months** of the date of execution of this AGREEMENT or **prior to first Certificate of Occupancy** for the Subdivision, whichever comes first. If SUBDIVIDER shall fail to complete the work required by this AGREEMENT within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER. Additionally, CITY may contact the surety bond companies and seek enforcement of any bonds securing this AGREEMENT.
7. Upon the execution of this AGREEMENT, SUBDIVIDER shall file and submit security to CITY, as obligee in the penal sum of **One-hundred Fifteen Thousand Dollars (\$115,000.00)**, for Public Improvements, conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this AGREEMENT and conditioned upon the full and faithful performance of any and all public improvement work required hereunder.
8. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this AGREEMENT, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.
9. Upon the execution of this AGREEMENT, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of **One-hundred Fifteen Thousand Dollars (\$115,000.00)** insuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.
10. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.

11. Any faithful performance security required hereunder shall be reduced to ten percent (10%) of the security's original value for one (1) year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
12. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's sole cost and expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, CITY may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay CITY the premium therefor.
13. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this AGREEMENT will have:
 - a. In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.
 - or
 - b. In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.
14. SUBDIVIDER shall indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee or agent of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.

15. SUBDIVIDER shall comply with all conditions and notes of approval for this Subdivision, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and

	Type of Fees and Deposits	City Account No.	Calculated Fee
1	Plan Review, Map Review and Inspection Deposit(10% of Engineers Estimate)	PJ2830-13-2500	\$11,500.00
		Total =	\$11,500.00

inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain **Project/Private Job Account No. 1220** (and any subsequent accounts created for this Subdivision) for this purpose with additional deposits as required by CITY. Estimated Engineering Fees to be paid upon execution of this AGREEMENT are as follows:

- a. Estimated Engineering Fees to be paid upon execution of this AGREEMENT are as follows:

- b. Estimated Engineering Fees to be paid at the time of building permit issuance:

	Type of Fee	City Account No.	Calculated Fee
1	Water Connection Fee: <i>(based on 25 units @ \$1,164 per unit)</i>	402-3715	\$29,100.00
2	Water Connection Fee Credit: <i>(based on 1.26 acres @ \$14,328 per acre credit for previous use.)</i>		-\$18,053.28
3	Sewer Connection Fee: <i>(based on 25 units @ \$1,406 per unit)</i>	452-3715	\$35,150.00
4	Sewer Connection Fee Credit: <i>(based on 1.26 acres @ \$20,448 per acre credit for previous use.)</i>		-\$25,764.48
5	Sewer Treatment Plant Fee: <i>(based on 25 units @ \$690 per unit)</i>	452-3714	\$17,250.00
6	Storm Drain Connection Fee: <i>(based on 1.26 acre @ \$21,562 per acre)</i>	340-3711	\$27,168.12
7	Calaveras Blvd Widening Traffic Impact Fee: <i>(based on 25 dwelling units @ \$275)</i>	315-3718	\$6,875.00
	Sub-total		\$71,725.36
8	Permit Automation Fee (2.5% of total fees above)	505-3601	\$1,793.13
		TOTAL =	\$73,518.49

The above fees set forth in Section 15.A and Section 15.B are estimates only. The amount of fee to be paid in Section 15.A and Section 15.B shall be the amount in effect as approved by the City Council, at the time that full payment is made to the City. Full payment is due to the City at time of building permit issuance unless otherwise stated in this AGREEMENT. There is no vesting of any fees or charges under this AGREEMENT.

16. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete Record Drawing showing all the changes from the original plan.
17. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that it will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY, SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
18. CITY will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this AGREEMENT.
19. SUBDIVIDER shall provide an approved Letter of Map Revision (LOMR) and a complete elevation certificate (or floodproofing certificate if applicable) based on finished construction, prior to every issuance of Certificate of Occupancy.
20. SUBDIVIDER shall have a City-approved Storm Water Control Plan (SWCP), including an Operation and Maintenance Plan (O&M Plan), prior to issuance of first building permit. SUBDIVIDER agrees to execute an Operation and Maintenance AGREEMENT (O&M AGREEMENT) and establish a Project/Private Job Account in accordance with the O&M AGREEMENT prior to issuance of the last Certificate of Occupancy for the Subdivision.
21. This AGREEMENT shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision. All Public and Private Improvements shall be constructed to the satisfaction of the City Engineer and Planning Director prior to issuance of the first Certificate of Occupancy for any residential unit in the Subdivision (temporary or final).
22. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
23. This AGREEMENT shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this AGREEMENT shall run with the land and are for the benefit of the other lands in the CITY OF

MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.

24. Nothing contained in this AGREEMENT shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.

25. Time shall be of the essence of this AGREEMENT. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT, the day and year first above written.

*Signed and Sealed this _____ day of _____, 2016.

CITY OF MILPITAS

SUBDIVIDER:

By: _____
Thomas C. Williams, City Manager

**Taylor Morrison, LLC, a California Limited
Liability Company**

**By: _____
Name:
Title:

APPROVED AS TO FORM THIS

_____ day of _____, 2016

By: _____
Christopher Diaz, City Attorney

APPROVED AS TO SUFFICIENCY THIS

_____ day of _____, 2016

By: _____
City Engineer

* Date should be same as date on Page 1 of 6.

** It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.